IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. No. 326 of 1999
Date of decision : 10.1.2007

Ranjeet

.....Appellant

Versus

Kailash & Ors.

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr.Sanjay Mittal,Advocate
for the appellant.

Mr. Arun Palli, Advocate
with Mr. Jai Bhagwan, Advocate
for respondent No. 1.

Mr. R.C. Kapoor, Advocate
for respondent No.3

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VINOD K. SHARMA,J.(ORAL)

The present appeal has been filed against the order passed by the learned Motor Accident Claims Tribunal, Narnaul vide which the claim petition filed by the appellant under Section 166 of the Motor Vehicle Act,1988 for grant of compensation on account of injuries suffered by the claimant in a road accident, was dismissed.

The brief facts of the case are that on 16.8.1995 claimant Ranjeet had boarded bus No. RJ-18-P-0152 from his village Nimbhi for going to Mahendergarh. Badlu Ram son of Mahada Ram, Dinesh and other co-villagers also boarded the said bus. The said bus was driven by respondent No.1 Kailash, in a rash and negligent manner and when it had reached at the entrance gate of Bus Stand, Mahendergarh, several

passengers started unboarding the bus. The claimant also unboarded the bus and went on the roof of the bus to pick up his luggage. When the claimant was bringing his luggage from the roof of the bus to the ground, the driver of the bus started driving the bus all of a sudden at a very fast speed, on account of which, the claimant fell down on the ground and suffered injuries. He was removed from the spot and was got admitted in Community Health Centre, Mahendergarh for treatment. Due to the serious injuries suffered by the claimant, the doctor referred him to Medical College and Hospital, Rohtak, but instead of going to Medical College and Hospital, Rohtak, the claimant went to the Sawai Man Singh, Medical College and Hospital, Jaipur, where he remained under treatment as an indoor patient w.e.f. 18.8.1995 to 18.10.1995 and thereafter from 18.11.1995 to 1.12.1995 and then from 22.1.1996 to 17.2.1996. It was further pleaded that on 22.4.1996, the claimant had gone to SMS, Hospital, Jaipur for his check up. He was also treated at MCH, Rohtak, where he remained admitted from 9.7.1997 to 27.8.1997. It was also claimed that he had become permanent disabled in this accident. It was also claimed by the claimant that as he had become unconscious in the accident the doctor in connivance with respondents No. 1 & 2 and the police did not prepare his M.L.R. nor any FIR was recorded, rather a DDR was recorded showing this accident as a chance accident. The claimant was a student of 10+2 class and he was helping his father in the job of making shoes from which he was earning a sum of Rs.3000/- p.m. The age of the claimant at the time of accident was 24 years. On these allegations an amount of Rs. eight lacs was claimed including a sum of Rs. 80,000/- towards treatment.

On notice, respondents No. 1 & 2 appeared and sought an adjournment for filing the written statement. However, thereafter evaded the proceedings and were proceeded ex parte. Respondent No.3 National Insurance Co. Ltd. contested the claim of the claimant in terms of written statement dated 15.4.1998, wherein a preliminary objection was taken that the claim petition was vague and did not disclose any cause of action against the answering respondent. It was also claimed that no accident had taken place as no FIR was lodged against respondent No.1 under Sections 279, 337 IPC. It was also claimed that the claimant was not travelling in the bus bearing registration No. RJ-18-P-0152 nor the claimant was medico legally examined by any doctor. It was further claimed that the claim petition has been filed by the claimant in connivance with respondents No.1 & 2. The factum of accident was also denied.

After filing of replication, the following issues were framed:-

1. Whether claimant Ranjeet suffered injuries in a motor vehicular accident, caused by rash and negligent driving of Bus No. RJ-18-P-0152 by its driver respondent No.1 Kailash ? OPP
2. If issue No.1 is proved, to what amount of compensation, the claimant is entitled. If so from whom ? OPP
3. Relief.

On issue No.2, the learned Tribunal came to the conclusion that in view of the above circumstances, the claimant would have been entitled to a sum of Rs. 1,65,000/- as compensation. However, on issue No.1 the learned Tribunal has held that it was a chance accident and was not result of rash and negligent driving of Bus No. RJ-18-P-0152 by its driver

respondent No.1 Kailash. The only basis on which issue No.1 was decided against the appellant was that in the DDR lodged by the claimant it was claimed that it was merely a chance accident and, therefore, no negligence can be attributed to respondent No1. The judgment of this Court in the case of ***Virat Sama Vs. Mohan Lal 1994(1) P.L.R. 82*** was distinguished being not applicable to the facts of the case.

I have heard the learned counsel for the parties. The learned counsel for the appellant vehemently argued that DDR could not be a substitute for evidence giving positive version of the occurrence especially when statement before the Tribunal was made on oath and solemn affirmative. He further contended that in evidence he clearly pointed out that DDR was recorded due to connivance of respondents No. 1 & 2 with the police. Though respondent No.3 had also taken a positive stand that the claim petition had been filed in connivance with respondents No. 1 & 2, however, it chose not to lead evidence in support of this allegation. The stand of respondent No.3 that no accident was occurred stood belied by the suggestion made in the cross-examination to the witnesses regarding attributed negligence to the claimant on account of accident. In support of the said stand also no evidence was led. The learned counsel for the appellant further made reference to the evidence of PW1 & PW2 wherein the factum of accident stand duly proved. It has been specifically stated in the evidence that while the claimant was in the process of bringing down his luggage the bus Driver started the bus suddenly which resulted in his fall. It has also come in evidence that it is not only the claimant but also several other passengers who went to the roof of the bus to get their luggage to bring down had also fallen on him. The accident itself speaks that the

accident had occurred as suggested by the claimant and not as per the stand of the respondents. Once the bus driver had started the bus when the claimant and several other passengers were in the process of bringing down their luggage, negligence of respondent No.1 in this accident was duly proved.

Therefore, I agree with the contention raised by the learned counsel for the appellant and reverse the finding on issue No.1. Accordingly it is held that the claimant suffered injuries in the accident caused by the rash and negligent driving of bus No. RJ-18-P-0152 which was being driven by its driver respondent No.1 Kailash. There has been no challenge to the finding on issue No.2 and, therefore, the same stand affirmed. It is held that the claimant would be entitled to a sum of Rs. 1,65,000/- (Rs. one lac and sixty five thousand only) on account of injuries suffered by him in the motor vehicular accident. He would also be entitled to interest @ 7.5 % per annum from the date of award. The liability of the respondents shall be joint and several.

10.1.2007 **(VINOD K. SHARMA)**
'sp' **JUDGE**